



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration decision.

SUMMARY: The Department of Education (Department) gives notice that, on October 7, 2012, an arbitration panel (the Panel) rendered a decision in Rutherford Beard v. the Michigan Commission for the Blind (Case no. R-S/09-01).

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the Panel decision from Donald Brinson, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7310. If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: The Panel was convened by the Department under the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-1(a), after receiving a complaint from Rutherford

Beard, a licensed blind operator of a vending facility at the Joint Forces Training Center. Under section 107d-2(c) of the Act, the Secretary publishes in the Federal Register a synopsis of each Panel decision affecting the administration of vending facilities on Federal and other property.

Background

The complainant, Rutherford Beard, is a food vendor in the respondent's, the Michigan Commission for the Blind's (Commission), business enterprise program (BEP). On May 1, 2008, Mr. Beard signed a vending facility agreement to operate a cafeteria at the Joint Forces Training Center. He was provided with initial inventory and equipment, and the cafeteria began to sell food. This facility was projected to generate \$150,000 in annual sales with an 11 percent profit. The facility did not generate the expected sales and ultimately Mr. Beard had to lay off two employees. As a result, his staff was reduced to himself and a part-time employee.

Because the facility was not generating any profit, Mr. Beard asked for a profit percentage exception after six months. He explained that, if a vendor does not meet the expected profit margin and does not get an exception, he is not eligible to bid on a different facility. Mr. Beard

testified that he "tried everything," including opening on some weekends and opening for breakfast, but he did not generate a profit. After Mr. Beard attempted to transfer to another location, the Commission informed him that he had to remain for at least a year according to the BEP rules. The cafeteria was then closed.

In his appeal, Mr. Beard claimed that he did not get sufficient help from the BEP and was not allowed to transfer out after six months. He also asserted that there were vending machines in different buildings on the same grounds that could have been awarded to him to lessen the adverse financial effect of the lack of business. That solution was also denied. Mr. Beard also contended that because the initial projection for sales at this cafeteria was miscalculated, and because he was not allowed to transfer after six months, the Commission should reimburse him for his losses.

In response, the Commission asserted that, under its rules, there is no guarantee that a vendor will make a profit. It also pointed out that Mr. Beard did not exercise the procedural rights granted by the Act and the Commission's rules.

Summary of Panel Decision

At Mr. Beard's request, the Panel was convened on October 7, 2012. The Panel concluded that the Commission did not have the authority to grant Mr. Beard's requested relief. One Panel member asserted that section 107b(3) of the Act authorizes the Commission to provide licensed vendors with a fair minimum return when circumstances warrant it. Another Panel member indicated that this section is not mandatory language and that the Commission's rules do not provide for remuneration. The Panel chair stated that the Commission ought to adopt a rule to provide some remuneration for situations like this. However, absent any rule in place, the Panel decided that there was insufficient justification for any remuneration and, therefore, remuneration was not appropriate in this case.

The views and opinions expressed by the Panel do not necessarily represent the views and opinions of the Department.

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Dated: April 11, 2017.

Ruth E. Ryder,
Deputy Director, Office of Special
Education Programs, delegated the
duties of the Assistant Secretary
for Special Education and
Rehabilitative Services.

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